

## UNITED STATES DISTRICT COURT

for the  
District of New Mexico

In the Matter of the Search of  
(Briefly describe the property to be searched  
or identify the person by name and address)

Milton AUSTIN  
DOB: XX-XX-1980

Case No. 22 MR 403

## APPLICATION FOR A SEARCH WARRANT

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property (identify the person or describe the property to be searched and give its location):  
Attachment A (incorporated by reference)

located in the \_\_\_\_\_ District of \_\_\_\_\_ New Mexico \_\_\_\_\_, there is now concealed (identify the person or describe the property to be seized):  
Attachment B (incorporated by reference)

The basis for the search under Fed. R. Crim. P. 41(c) is (check one or more):

- ☒ evidence of a crime;  
☐ contraband, fruits of crime, or other items illegally possessed;  
☐ property designed for use, intended for use, or used in committing a crime;  
☐ a person to be arrested or a person who is unlawfully restrained.

The search is related to a violation of:

Code Section  
18 USC 922(g)1

Offense Description  
Felon in possession of a firearm

The application is based on these facts:  
See Affidavit

- ☒ Continued on the attached sheet.  
☐ Delayed notice of \_\_\_\_\_ days (give exact ending date if more than 30 days: \_\_\_\_\_) is requested under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.

Applicant's signature

Luke McPeck, Task Force Officer

Printed name and title

Electronically submitted and telephonically sworn.

Date: March 11, 2022

Judge's signature

City and state: Albuquerque, New Mexico

Honorable John F. Robbenhaar, U.S. Magistrate Judge

Printed name and title

**AFFIDAVIT IN SUPPORT OF AN APPLICATION FOR A SEARCH WARRANT**

I, Luke McPeck, being duly sworn, depose and state:

**INTRODUCTION**

1. I make this application in support of an application under Rule 41 of the Federal Rules of Criminal Procedure for a warrant to search the body of Milton AUSTIN (born in 1980)—specifically, to collect deoxyribonucleic acid (DNA) samples from AUSTIN by way of buccal swabs. As described below, there is probable cause to believe AUSTIN's DNA may be present on one firearm already seized by law enforcement in the course of this investigation and potentially other firearms that may be recovered as the investigation continues. Therefore, this warrant seeks authorization to collect a DNA sample from AUSTIN in order to compare that sample with samples collected from the lawfully seized evidence in this case.
2. I am familiar with the information contained in this Affidavit based upon the investigation that I have conducted, the statements of other law enforcement officers who have engaged in various aspects of this investigation, and my review of written reports and lapel video of law enforcement officers involved in this investigation in order to ascertain the facts of the case. Because this Affidavit is being submitted for the limited purpose of securing a search warrant, I have not included each and every fact known to me concerning this investigation. I have set forth only those facts that I believe are relevant to the determination of probable cause to support the issuance of the requested search warrant. When the statements of others are set forth in this affidavit, they are set forth in substance and in part.

**TASK FORCE OFFICER BACKGROUND AND EXPERIENCE**

3. I am a Task Force Officer (TFO) with the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). I am also a full-time salaried sworn law enforcement officer with the Albuquerque Police Department (APD) and have been so for approximately 8 years. I possess a Bachelor's Degree in Psychology and a Master's Degree in Clinical Mental Health Counseling. I have served in the United States Marine Corps Reserve for approximately 17 years. I have received a significant amount of firearms training during my time serving with the Marine Corps and Albuquerque Police Department. In my current role as an ATF Task Force Officer, I investigate violations of federal criminal statutes, to include violations of federal firearms laws.
4. I have training and experience investigating violations of federal law. As a result of my training and experience as an ATF Task Force Officer, I am familiar with the federal criminal laws and know that it is a violation of Title 18, United States Code, Sections 922(g)(1) and 924 for any person who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year to knowingly possess any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

**IDENTIFICATION OF THE INDIVIDUAL TO BE SEARCHED**

5. The individual to be searched is Milton AUSTIN, Date of Birth: XX/XX/1980, SSN: XXX-XX-4375. AUSTIN is further described as a black male approximately 5'11" ft tall, approximately 184lbs with brown hair and brown eyes.
6. The applied-for warrant would authorize the taking of buccal cells from Milton AUSTIN with the use of oral swabs, which would then be forwarded to a law enforcement forensic laboratory for DNA analysis.

**PROBABLE CAUSE**

**Albuquerque Police Department  
November 28, 2021, Encounter with Milton AUSTIN**

7. The Bureau of Alcohol, Tobacco, Firearms and Explosives is conducting a criminal investigation of Milton AUSTIN regarding possible violations of 18 U.S.C. §§ 922(g)(1) and 924, that being a felon in possession of a firearm. In reviewing reports, lapel video, and other documents, and in speaking with Albuquerque Police Officers involved in this case, the affiant has learned the following.
8. On November 28, 2021, at approximately 9:38 PM, Albuquerque Police Officer Brendon Farrell and additional officers were dispatched to the area of San Pedro Dr NE and Central Ave NE in Albuquerque, New Mexico, in reference to a male in a silver Ford F-150 pointing a shotgun at a female who was on foot. Comments on the call stated that the female ran away from the male. Additional comments on the call stated there were possibly two males inside the suspect vehicle.
9. Officer Farrell contacted the calling party who is known to the affiant and will be referred to as MA. Officer Farrell reported that MA observed a male wearing a red hooded sweatshirt point a shotgun at the female. The shotgun was described as black with a brown wooden handle. While Officer Farrell was gathering information from MA, the female victim, who is known to the affiant and will be referred to as ML, called the police and advised that she was hiding inside of a nearby residence. The address is known to the affiant but will not be identified to protect the owner and occupants of the residence.
10. Detective Justin Jones was in the area of Central Ave NE and San Pedro Dr NE in an unmarked police vehicle when officers were dispatched to the area. He began checking the area for the suspect vehicle. Detective Jones went to the area of the nearby residence and observed a silver Ford F-150 on the north side of the street with two individuals outside of the vehicle on the passenger side. Detective Jones made a U-turn and observed marked police units approaching the individuals. He reported that he observed one of the individuals appear to drop an item near a fence just north of the silver F-150.
11. Officer Farrell went to the area of the nearby residence. As he approached, he observed a silver Ford F-150 on the north side of the road and two male individuals near the vehicle. A male individual wearing all black appeared to exit the driver's side of the vehicle and

walk around the vehicle. The male individual wearing a red hooded sweatshirt walked away from the vehicle on the passenger side. Officer Farrell noted that the vehicle and male individuals matched the description from the call.

12. Officer Farrell advised the male individuals that they were being detained for a police investigation. The male individuals complied and sat on the curb. The male wearing black was identified as Milton AUSTIN.
13. Detective Jones, from the outside of the vehicle in a public roadway, looked inside the silver F-150 to clear it of any individuals. He observed an older model pump shotgun in the front seat of the vehicle. He advised Officer Daniel Collier that he observed a shotgun in the vehicle and that he observed one of the males drop an item near the fence just north of the vehicle. Officer Collier utilized his flashlight to look into the suspect vehicle from the outside while standing on a public sidewalk and observed a shotgun in plain view on the seat.
14. Officer Farrell spoke with the victim, ML. He reported she advised him that she was at the Circle K located at the intersection of San Pedro Dr NE and Central Ave NE. She reported that two males in a silver F-150 threatened her with guns and told her to get inside the truck. Officer Farrell reported that she stated that she did not get in the truck and the males became angry and pointed the firearms at her. She indicated that the male in a red hooded sweatshirt pointed the shotgun at her and the skinny one in all black with the dreads pointed a handgun at her. The male described as the skinny one in all black with the dreads was subsequently identified as Milton AUSTIN. ML stated that he goes by the nickname "TLOC" or "Country" and believes his real name is Milton Austin. She stated she believed that she was going to die when they pointed the firearms at her.
15. Officer Collier searched the area near the suspect vehicle. He located a silver and black .38 caliber Armscor Precision International Model 200 Revolver SN: RIA1716408 between a telephone pole and a fence to the north of the silver F-150. This appeared to be the general area that Detective Jones reported to have observed one of the individuals drop an item. Officer Collier reported that the firearm was loaded with six .38 caliber rounds. The firearm and ammunition were tagged into Albuquerque Police Department evidence.
16. AUSTIN was arrested for the New Mexico state charges of aggravated assault and felon in possession of a firearm.
17. At approximately 02:27 am, Officer Brian Thomas was dispatched to transport AUSTIN to the Bernalillo County Metropolitan Detention Center (MDC). Officer Thomas reported that he conducted a search of AUSTIN's person prior to placing him into his patrol vehicle. He reported that he found an unfired cartridge AUSTIN's left front pocket of his jeans.
18. AUSTIN was transported to MDC and transferred into their custody.

19. On December 7<sup>th</sup>, 2021, Affiant contacted Officer Collier to ascertain the location of the round found in AUSTIN's pocket by Officer Thomas. Officer Collier located the round in his patrol vehicle. Officer Collier reported that he tagged it into APD evidence on December 7<sup>th</sup>, 2021.

#### **AUSTIN's Prior Felony Convictions**

20. The affiant conducted a criminal history query of AUSTIN and received certified copies of Plea and Disposition Agreement and Judgment and Sentencing documents indicating four (4) previous felony convictions out of the 2nd Judicial District Court, County of Bernalillo, State of New Mexico under the following individual cause numbers:
  - a. D-202-CR-2001-02730 for armed robbery (3 counts), a second-degree felony. Convicted on: 09/20/2001 Sentenced on: 03/08/2002
  - b. D-202-CR-2001-00268 for armed robbery (1 count), a second-degree felony. Convicted on: 09/20/2001 Sentenced on: 03/08/2002
21. It appears that cause numbers D-202-CR-2001-02730 and D-202-CR-2001-00268 were combined and decided on the same date by the same Judge. They each have separate Plea and Disposition Agreement and Judgment and Summary documents.
22. The affiant observed a Plea and Disposition Agreements from Cause number D-202-CR-2001-02730 and D-202-CR-2001-00268 that appears to bear Austin's signature above his name indicating that he is pleading guilty to four felony offenses punishable by over one year imprisonment indicating AUSTIN knows that he is a convicted felon.
23. TFO McPeck reviewed certified copies of Plea and Disposition Agreement and Judgment and Sentencing documents indicating two (2) previous felony convictions out of the 13<sup>th</sup> Judicial District Court, County of Sandoval, State of New Mexico under the following individual cause numbers:
  - a. D-1329-CR-2001-00036 for Armed Robbery (DW), a second-degree felony, and Conspiracy to Commit Armed Robbery, a third-degree felony. (Convicted on 05/11/2001 and sentenced on 11/19/2001).
24. The affiant reviewed certified copies of court documents out of the Baltimore City Circuit Court in the State of Maryland that indicate two (2) convictions for AUSTIN that resulted in a sentence in excess of one (1) year each under the following cause number:
  - a. 114170036 for Wearing, Carrying, Transporting (WCT) a Handgun, sentenced to 3 years, and Possession of a firearm after being convicted of a disqualifying crime (sentenced 05/12/2015 to 5 years).



### **Examination of Firearm**

25. On December 21st, 2021, at approximately 08:29 am, the affiant examined and photographically documented the firearm (a silver and black .38 caliber Armscor Precision International Model 200 Revolver SN: RIA1716408) reported by Officer Collier to have been located in close proximity to AUSTIN on November 28th, 2021, and believed to have been possessed by AUSTIN on that date. The affiant also examined and photographically documented six .38 special rounds that were located in the firearm, as well as one .38 special round that was reported by Officer Thomas to have been found on AUSTIN's person.
26. The round located in AUSTIN's pocket by Officer Thomas appears to be the same caliber, .38 special, and appears to have the same headstamp as the rounds found in the firearm that is believed to be possessed by AUSTIN.
27. During the course of examining this firearm, the affiant conducted a function test on the firearm; based on the affiant's training and experience, and that of other more experienced law enforcement officers, the firearm appears to be functional, pending a test fire, and comprises the frame or receiver of a weapon designed to expel a projectile by means of an explosive, as defined in federal law.

### **Interstate Nexus of Firearm**

28. On December 21st, 2021, ATF Special Agent (SA) Nathan Kempton, who is a Certified Interstate Nexus Expert, examined photographs of the firearm (a silver and black .38 caliber Armscor Precision International Model 200 Revolver SN: RIA1716408) reported by Officer Collier to have been located in close proximity to AUSTIN on November 28th, 2021, and believed to have been possessed by AUSTIN on that date. He also examined photographs of six .38 special rounds that were located in the firearm, as well as one .38 special round that was reported by Officer Thomas to have been found on AUSTIN's person.
29. SA Kempton stated, based upon his initial examination, the silver and black .38 caliber Armscor Precision International Model 200 Revolver SN: RIA1716408, six .38 special rounds that were located in the firearm, and the one .38 special round that was located on AUSTIN's person, were all manufactured outside the state of New Mexico, meaning the firearm and ammunition traveled in interstate commerce prior to AUSTIN possessing them.

### **TECHNICAL TERMS**

30. Based on my training and experience, the affiant used the following technical terms to convey the following meanings:
  - a. Deoxyribonucleic acid (DNA): DNA carries design information between generations, and thus accounts for inherited biological traits (phenotypes).

- b. At conception, a father's sperm injects a set of DNA molecules into a mother's egg, which already contains a nearly matching set. Those molecules contain the designs for all the material components needed for growth, development, and daily living.
  - c. Buccal: pertaining to the inside of the cheek, the surface of a tooth, or the gum beside the cheek.
31. Based on the affiant's training and experience, and that of other more experienced law enforcement officers, the affiant knows it is common for individuals to transfer biological materials containing their specific DNA onto objects handled by those individuals.

#### **EVIDENCE TO BE SEIZED**

32. The affiant knows it is common for an individual's DNA to be transferred to items handled by that individual. In this case, the item is a silver and black .38 caliber Armscor Precision International Model 200 Revolver SN: RIA1716408, which has already been swabbed for DNA.
33. Based upon these facts, the affiant respectfully requests that a search warrant be issued for Milton AUSTIN, to collect a sample of buccal cells for forensic analysis and for use as evidence in court, as the affiant believes there is probable cause to suggest Milton AUSTIN possessed a firearm (a silver and black .38 caliber Armscor Precision International Model 200 Revolver SN: RIA1716408), in violation of 18 U.S.C. §§ 922(g)(1) and 924.

#### **MANNER OF COLLECTION**

34. Based on my training and experience, the affiant knows the buccal swab samples from AUSTIN can, and will, be obtained pursuant to approved medical procedures, without unnecessary discomfort to AUSTIN and under circumstances where he will feel little or no pain or embarrassment.
35. Given the violent crimes for which AUSTIN has been convicted of, as well as the nature of the Federal investigation of AUSTIN, the affiant respectfully requests authorization to utilize reasonable force in detaining AUSTIN to execute this Search Warrant, as well as to utilize reasonable force in obtaining buccal swabs from AUSTIN should AUSTIN refuse to cooperate in the collection process.

**CONCLUSION**

36. Based on the facts outlined above, the affiant submits there is probable cause to believe AUSTIN unlawfully possessed a firearm and that his DNA will be found on the firearm referenced in this affidavit, as well as other items of evidence that have already been lawfully seized. Following the execution of the warrant sought in this application, investigators will swab the firearm for DNA material, which will be compared to the buccal samples collected from AUSTIN. Additional evidence from this case that is already in the lawful custody of law enforcement (e.g., ammunition and other firearms) may also be swabbed for DNA material, which may then be compared with the samples collected from AUSTIN. Therefore, the affiant respectfully requests that the Court issue a search warrant authorizing the collection of buccal cells from Milton AUSTIN for the purpose of conducting forensic analysis.

Respectfully submitted,



\_\_\_\_\_  
Luke McPeck  
Task Force Officer  
Bureau of Alcohol, Tobacco, Firearms and  
Explosives

Electronically subscribed and telephonically sworn to  
on March 11, 2022:



\_\_\_\_\_  
HONORABLE JOHN F. ROBBENHAAR  
UNITED STATES MAGISTRATE JUDGE



**Attachment A**

**DESCRIPTION OF PERSON TO BE SEARCHED**

The person known as Milton AUSTIN, Date of Birth: XX/XX/1980, SSN: XXX-XX-4375

AUSTIN is further described as a Black male approximately 5'11" ft tall, approximately 184lbs with Brown hair and brown eyes.

See below picture



**Attachment B**

**DESCRIPTION OF EVIDENCE TO BE SEARCHED FOR AND SEIZED**

DNA evidence from Milton AUSTIN, to wit; Buccal cell swabs, sufficient for DNA analysis, which would be material evidence in a criminal prosecution.